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December 12, 2007

Ms. Jennifer J. Johnson
Secretary
Board of Governors
of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Department of the Treasury
Office of Critical Infrastructure Protection
and Compliance Policy
Room 1327
Main Treasury Building
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: FRB Docket Number R-1298
Treasury Docket Number DO-2007-0015

Dear Sir and Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the proposed rule, Prohibition of Funding of Unlawful Internet Gambling (Regulation GG). The Unlawful Internet Gambling Enforcement Act of 2006 (Act) requires the Board of Governors of the Federal Reserve System (the Board) and the Department of the Treasury (the Treasury) (collectively, the Agencies) to issue rules implementing the applicable provisions of the Act requiring financial institutions to identify and block payments or

¹ The Independent Community Bankers of America represents 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than \$908 billion in assets, \$726 billion in deposits, and more than \$619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

otherwise prevent or prohibit transactions in connection with unlawful Internet gambling.

Summary of ICBA Position

ICBA commends the Agencies for proposing regulations that fulfill the Act's requirements without imposing undue new burden on all payment system participants. We particularly appreciate the Agencies' use of the Act's authority to exempt certain transactions when transaction tracking and blocking is not reasonably practical.

ICBA is deeply concerned when our nation's payment systems are used to track, analyze, and block individual payment transactions given the potential for such activity to undermine payment systems efficiency. Payment systems were not designed for this function.²

While ICBA did not take a position on the appropriateness of prohibiting unlawful Internet gambling, ICBA played a leadership role in conveying to Congress the burden the banking industry and payment systems would face if charged with identifying and blocking unlawful Internet gambling payment transactions. Our concerns registered with lawmakers, who responded by adding a provision to the Act granting the Agencies the rule writing authority. This includes the authority to exempt certain transactions when tracking and blocking was not reasonably practical. ICBA strongly applauds the Agencies for using this exemption authority to write a narrow and reasonable regulatory proposal. We strongly support exempting most ACH, check and wire-transfer system participants.

We recognize the ambiguity in the proposed rule, particularly with regard to what constitutes "unlawful Internet gambling," is due to the ambiguity in the law. While ICBA acknowledges that a regulatory definition for "unlawful Internet gambling" could facilitate compliance for some participants, we believe any attempt to establish such a definition would be overly complex and counterproductive given the diversity of Federal, State, and Indian Tribal gaming laws. We concur with the Agencies' analysis that the establishment and maintenance of a list of unlawful Internet gambling businesses is not feasible given the significant investment and ongoing legal analysis needed to interpret the various gambling laws and the difficulty of keeping up with marketplace changes as firms enter or exit the business simply or change their names to stay one step ahead of law enforcement. ICBA encourages the Agencies to develop a

² Community bankers are committed to support balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. ICBA believes that it is critical that the banking industry's resources be focused where risks to national safety and financial soundness are greatest. The added burden of monitoring all payment transactions for the taint of unlawful Internet gambling will drain finite resources currently engaged in complying with anti-terrorism, anti-money laundering regulations and the daily operation of community banks to meet the financial needs of their customers and communities.

web-based resource containing a comprehensive listing of laws permitting Internet gambling.

We support the proposed liability waiver provisions. Participants striving to comply with the Act and implementing rule need liability waivers because neither the Act nor the proposed rule defines unlawful Internet gambling. ICBA recommends the Agencies incorporate appropriate language to convey that these provisions extend to non-exempt designated payment system participants.

With regard to definitions, ICBA urges the Agencies to clarify that a “participant in a designated payment system” does not include a consumer gambler, and to define the term “identifying and blocking restricted transactions,” to clarify that the term only requires the return of restricted transactions.

ICBA requests the final rule include language clearly conveying that **exempt** participants have no responsibility for identifying and blocking restricted transactions. Additionally, we request that the final rule explicitly allow non-exempt participants to develop flexible, risk-based due diligence procedures matching the level of risk posed by the customer and the incorporation of these procedures into account-opening procedures consistent with the requirements of the Federal banking agencies’ anti-money laundering compliance program. ICBA opposes any language requiring participants to periodically confirm the nature of commercial customers’ business.

Finally, ICBA strongly encourages the Agencies to adopt an effective date of 18 to 24 months after issuance of the final rule.

Background and Proposal

The Act prohibits any person engaged in the business of betting or wagering from knowingly accepting payments in connection with the participation of another person in unlawful Internet gambling. Such transactions are termed as “restricted transactions.” Unlawful Internet gambling, defined by the Act, “as placing, receiving, or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.” The Act exempts a bet or wager made within a single state or Indian Tribal lands and transactions or activity under the Interstate Horseracing Act of 1978. Additionally, the Act does not explicitly identify activities that are legal or illegal, but relies on applicable Federal and State laws.

The Act requires the Agencies, in consultation with the U.S. Attorney General, to prescribe regulations that:

- designate payment systems that could be used in connection with or to facilitate restricted transactions.
- require designated payment system participants to establish policies and procedures reasonably designed to identify and block unlawful Internet gambling transactions.

- identify types of policies and procedures reasonably designed to identify and block restricted transactions, including non-exclusive examples.
- exempt certain payment system participants from any imposed regulatory requirements if it is not reasonably practical to identify and block restricted transactions.

The Act deems a designated payment system participant to be in compliance with the implementing regulations if it relies on and complies with the policies and procedures of the designated payment system and such policies are in compliance with the regulations.

The scope of the proposed Regulation GG is consistent with the Act's requirements, including not specifying legal or illegal gambling activities, exempting intrastate and Indian Tribal land bets and wagers and activities under the Interstate Horseracing Act of 1978.

Under the proposed regulation, designated payment systems -- the automated clearing house (ACH) systems, card systems (debit, credit, prepaid or stored value products), check collection systems, money transmitting businesses, and wire transfer systems -- are systems that could be used in connection with, or to facilitate, a restricted transaction and are subject to the regulation. A participant in designated payment system is defined as an operator of a designated payments system, or a financial transaction provider that is a member of, has contracted for services, with, or is otherwise participating in, a designated payment system.

The Agencies used the authority granted by the Act to exempt certain transactions from the proposed regulation when transaction tracking and blocking is not reasonably practical. The Agencies propose to establish exemptions based on a participant's role rather than based on transaction categories or entire payment systems. Consequently, most ACH, check and wire-transfer system participants are exempt. Payment system participants not exempt from compliance include: participants maintaining customer relationships with Internet gambling companies; card systems participants that receive cross-border transactions; participants that send transactions to foreign payment service providers; and money transmitting businesses.

The proposed regulations would become effective six months after adoption of the final rules.

ICBA Comments

ICBA commends the Agencies for proposing regulations that fulfill the Act's requirements without imposing undue new burden on all payment system participants. We particularly appreciate the Agencies' use of the Act's authority to exempt certain transactions when transaction tracking and blocking is not reasonably practical. Our comments on specific aspects of the proposed rule are discussed below.

Definitions

ICBA supports the Agencies' approach for defining terms used in the proposed regulation. The proposal does not establish regulatory definitions for gambling-related terms and incorporates appropriately the Act's definitions of these terms. While ICBA acknowledges that a regulatory definition for "unlawful Internet gambling" could facilitate compliance for some participants, we believe that any attempt by the Agencies to establish such a definition would be overly complex and counterproductive given the diversity of Federal, State, and Indian Tribal gambling laws. Moreover, the Agencies' decision not to define unlawful Internet gambling is consistent with the Act.

Additionally, the proposed rule generally relies on existing regulatory or statutory definitions for payment system terms. The definitions for "money transmitting business" and "money transmitting services" have the same meanings as the terms in the Bank Secrecy Act.

We recommend the Agencies make a minor modification to the definition for "participant in a designated payment system" to more clearly convey that the regulation does not apply to a consumer gambler. The proposed definition states that "term does not include a customer of the financial transaction provider if the customer is not a financial transaction provider otherwise participating in the designated payments system on its own behalf." We believe such clarification can be accomplished by modifying this definition to read, ". . . if the customer is not a *consumer (the gambler)* or a financial transaction provider otherwise participating in" ICBA urges the Agencies to adopt this recommendation.

The Act requires financial institutions to identify and block payments or otherwise prevent or prohibit transactions in connection with unlawful Internet gambling. ICBA requests the Agencies define "identifying and blocking restricted transactions," and clarify that the term only requires the return of restricted transactions. Additionally, the definition should clearly convey that participants are not required to freeze funds and place them in escrow in the manner required by the Office of Foreign Assets Control (OFAC) rules.

Exemptions

ICBA commends the Agencies for using their statutory authority to exempt certain transactions from the proposed regulation when transaction tracking and blocking is not reasonably practical. Rather than exempt all categories of restricted transactions or entire payment systems, the Agencies based exemptions on a participant's role. This approach correctly places the burden on payment system participants best positioned to ascertain whether an entity is engaged in unlawful Internet gambling and to identify and block these restricted transactions.

ICBA strongly supports exempting most ACH, check and wire-transfer system participants on the basis that transaction tracking and blocking is not reasonably practical. ICBA requests that the final rule include language clearly conveying that **exempt** participants have no responsibility for identifying and blocking restricted transactions.

Specific proposed exemptions include:

- ACH System
 - ACH Operators
 - Banks originating ACH credit transactions, known as Originating Depository Financial Institutions (ODFIs)
 - Banks receiving ACH debit transactions, known as Receiving Depository Financial Institutions (RDFIs), except for certain cross-border transactions
- Check Collection System
 - Check Clearing Houses
 - Paying Bank (unless also the depository bank)
 - Collecting Bank (unless also the depository bank)
 - Returning Bank
- Wire Transfer Systems
 - Originator's Bank, the depository bank sending wire transfer on behalf of the gambler
 - Intermediary Bank (unless a foreign correspondent)
 - Wire Transfer Networks

As noted, ICBA supports the Agencies' decision to exempt ODFIs in ACH credit transactions and originating banks in wire transfer transactions from compliance. We concur with the Agencies' analysis that these financial institution participants could, in some instances, develop processes to obtain information from originators regarding the nature of a transaction to facilitate the identification and blocking of prohibited transactions, but at substantial cost and burden.

Payment system participants *not* exempt from compliance include: participants maintaining customer relationships with Internet gambling companies, card systems (debit, credit, prepaid or stored value), participants that send transactions to foreign payment service providers, and money transmitting businesses. All non-exempt or covered payment system participants must, under the proposed regulations, establish and implement written policies and procedures to identify and block restricted transactions. Financial institutions can establish their own policies and procedures or rely on and comply with policies and procedures established by a designated payment system.

Financial institutions holding direct customer relationships with Internet gambling businesses should exercise reasonable due diligence to ensure that the relationship is not used for sending or receiving restricted transactions. Financial institutions covered by this compliance requirement include those:

- originating ACH debit transactions,
- receiving ACH credit transactions,
- serving as a depository bank in a check collection system,
- acting as a beneficiary bank in wire transfer systems, and
- maintaining relationships with ACH third-party senders.

Liability Provisions

ICBA strongly supports the proposed liability provisions, consistent with the Act, which relieve a person identifying and blocking, preventing, prohibiting or failing to honor a transaction of liability if a transaction is restricted or believed to be restricted. This liability waiver also extends to instances in which a person relies on the policies and procedures of a designated payment system to identify and block transactions. Moreover, given the lack of an unlawful Internet gambling definition, these provisions are important in encouraging payment system participants to exercise appropriate due diligence to identify and block restricted transactions without fear of legal action.

To further clarify the applicability of the liability provisions, ICBA recommends the Agencies incorporate appropriate language to convey that these provisions extend to non-exempt designated payment system participants. Use of the term “person” implies that liability extends to a natural person or consumer only.

Overblocking Provision

Consistent with the Act, the proposed regulations do not require or suggest that participants establish policies and procedures to identify and block Internet gambling transactions that are legal under applicable Federal and State law. ICBA strongly supports the Agencies position not to prescribe regulations requiring participants to process legal Internet gambling transactions. Financial institutions have the ability to deny banking services to commercial customers for various business reasons such as increased risk associated with particular businesses. There should be no specific requirement for financial institutions to provide banking services to any business.

Community banks would welcome a web-based resource containing a comprehensive listing of laws permitting Internet gambling. This resource could assist community banks in the uncomfortable and inappropriate position of attempting to identify if a business customer’s activities violate the Act’s definition of unlawful Internet gambling. ICBA encourages the Agencies to develop such a resource.

Reasonably Designed Policies and Procedures

The proposed regulations set forth reasonably designed written policies and procedures, including non-exclusive examples, non-exempt participants in each designated payment should have in place. Generally, the Agencies require non-exempt or covered participants to establish policies and procedures for conducting appropriate due diligence in establishing and maintaining customer accounts, as well as policies and procedures for identifying and blocking restricted transactions and remedial actions if participants discover a customer is engaging in restricted transactions. It is unclear whether these reasonably designed policies and procedures must be retroactively applied to existing commercial relationships. ICBA requests the Agencies clarify non-exempt participant responsibilities for existing customer relationships.

The supplemental information accompanying the proposal clearly conveys that exempt participants have no responsibility for identifying and blocking restricted transactions. ICBA requests that the Agencies include appropriate language in the final rule clarifying that exempt participants have no such responsibility.

Card systems have additional policy and procedural requirements under the proposal. Card systems must also ensure that transaction codes and merchant/business category codes accompany transaction authorization requests and the operational capability exists to identify and deny authorization for a restricted transaction. Card systems would also be subject to ongoing monitoring or testing requirements to detect potential restricted transactions. ICBA anticipates that most community banks will likely rely on card network rules and procedures to ensure compliance with the final rule.

Due Diligence

Under the proposal, due diligence policies and procedures generally include: 1) screening potential commercial customers to ascertain the nature of their business, and 2) a provision in the commercial customer agreement prohibiting the customer to engage in restricted transactions. Similar procedures would apply to ACH third-party senders, foreign ACH gateway operators, foreign correspondent bank relationships, and card systems.

The proposal's supplemental information states that the "Agencies anticipate participants [with direct customer relationships] would use a flexible, risk-based approach in their due diligence procedures in that the level of due diligence performed would match the level of risk posed by the customer." Additionally, the supplemental information notes that these due diligence procedures should be incorporated into depository institutions' account-opening procedures, consistent with the requirements of the Federal banking agencies' anti-money laundering compliance program. ICBA recommends the Agencies include the expectations referenced above in the final rule to facilitate participant compliance.

In response to the Agencies' request for comments on whether, and to what extent, due diligence examples should explicitly include periodic confirmation of the nature of customers' business, ICBA believes such an explicit requirement should not be included in any due diligence examples as the procedures for identifying and blocking restricted transactions will uncover any unlawful Internet gambling activities. A periodic confirmation requirement would impose considerably more burden on participants without commensurate benefit to the enforcement effort.

Remedial Action

The proposal also requires non-exempt participants to have policies and procedures if the participant discovers its customer engaging in restricted transactions. These policies and procedures could include fines, activity restrictions, system restrictions, account or relationship termination, and the filing

of Suspicious Activity Reports. ICBA believes these examples are reasonable, but questions whether financial institutions will impose fines.

Monitoring

Under the proposal, card systems must implement ongoing monitoring or testing to: 1) determine whether transaction authorization requests are coded correctly, 2) monitor web sites to detect unauthorized use of the card system and its trademark and 3) detect suspicious payment volumes from a merchant customer. ICBA defers to card system comments regarding these ongoing monitoring and testing requirements.

We applaud the Agencies for not imposing similar ongoing monitoring or testing requirements for other non-exempt participants. We do, however, request that the Agencies add language in the final rule to explicitly state that non-exempt participants in other designated payment systems would not be subject to similar monitoring and testing requirements.

Effective Date

The Agencies propose that the regulations become effective six months after issuance of the final rule. Six months is inadequate time for non-exempt participants to develop and implement policies and procedures, including changes to commercial customer agreements, and for designated payment system participants, particularly card systems, to make the necessary software changes. ICBA strongly encourages the Agencies to adopt an effective date 18 – 24 months after issuance of the final rule to provide participants sufficient time to implement effective policies, procedures, agreements, and systems ensuring compliance.

List of Unlawful Internet Gambling Businesses

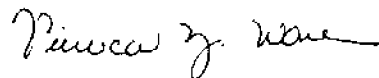
The Agencies request comment on whether establishment and maintenance of a prohibited list of unlawful Internet gambling businesses is appropriate and feasible. While a list of unlawful Internet gambling businesses seems, at first blush, to be an ideal tool for distinguishing lawful from unlawful Internet gambling transactions, in reality, the creation and ongoing maintenance of such a list is not feasible given the significant initial and ongoing burden and cost. The Agencies would have to formally interpret the various laws governing gambling to determine whether the activities of each Internet gambling business were legal or illegal. Even the identification of businesses engaged in Internet gambling would be problematic given businesses engaging in illegal activities would frequently change their names to avoid detection. We concur with the Agencies' analysis that the establishment and maintenance of a list of unlawful Internet gambling businesses is not feasible given the significant investment and ongoing legal analysis needed to interpret the various gambling laws.

Conclusion

Again, the ICBA strongly applauds the Agencies for proposing narrow and reasonable regulations that fulfill the Act's requirements without imposing undue new burden on all payment system participants. We particularly appreciate the Agencies' use of their exemption authority to exempt most ACH, check, and wire-transfer system participants. ICBA encourages the Agencies to incorporate ICBA's recommendations clarifying various provisions and to adopt an effective date of 18 to 24 months after issuance of the final rule.

Thank you for the opportunity to comment. ICBA looks forward to continue working with the Agencies on the finalization and implementation of this rule. If you have any questions or would like additional information, please contact the undersigned by email at viveca.ware@icba.org or telephone at (202)659-8111.

Sincerely,



Viveca Y. Ware
Director, Payments & Technology Policy